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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,457	04/20/2006	Thomas Mecklenburg	LU 6139 (US)	2427

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LyondellBasell Industries
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EXAMINER

HARLAN, ROBERT D

ART UNIT	PAPER NUMBER
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1796

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05/11/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,457	Applicant(s) MECKLENBURG ET AL.	
	Examiner Robert D. Harlan	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Appeal Brief filed by Applicant on 02/01/2010 has been entered.

Response to Amendment/Arguments

2. Applicant's amendment and arguments filed on 02/01/2010 have been fully considered and they are found unpersuasive.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-9, 11, 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshino et al., EP 0 663 418 B1 (hereinafter "Yoshino") in combination with Babler, U.S. Patent No. 5,931,997 (hereinafter "Babler") and Warych, U.S. Patent No. 5,056,426 (hereinafter "Warych"). Yoshino teaches a molding composition composed of an olefin polymer (polypropylene), processing at the claimed melt flow, containing 40% by wt. of glass fibers (cut glass fibers with diameter of 3 to 40 microns and length of 1 to 10 mm) which are bonded to the olefin polymer by silane coupling agents (compatibilizer) and process for producing said molding composition and article containing said molding composition. See Yoshino, ¶¶ [0013-0015], [0023], [0026], [0028-0029], [0039 (melt flow rate in the range of from 5 to 150 g/10min], [0049 (cut glass fibers with length of 1 to 10 mm)]; Table 1-3; Examples 1-5. Yoshino differs from the current invention in that the current invention contains phthalocyanine pigment as a nucleating agent. Warych teaches a thermoplastic material comprising a polypropylene with

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a copper-phthalocyanine nucleating agent. See Warych, col. 3, line 47 through col. 4, line 32; claims 2 & 4. Babler teaches the use of copper-phthalocyanine as a coloring agent for use in coating compositions, plastics and fibers in an amount of 0.01 to 30 wt. %, which encompasses the claimed amount of copper-phthalocyanine pigment of .005 to .05 wt %. See Babler col. 4, lines 51-60; col. 5, lines 57-60; col. 6, lines 5-12.

6. In recently decided *KSR Int'l Co. v. Teleflex, Inc.*, the Supreme Court unanimously stated "the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable result." In view of Warych and Babler, one having an ordinary skill in the art would be motivated to modify Yoshino by introducing a copper-phthalocyanine nucleating agent into the molding composition because Yoshino makes it clear that dyes and coloring agents are accessible. Furthermore, Babler describes copper-phthalocyanine as a coloring agent in thermoplastics such as polypropylene and Warych teaches that copper-phthalocyanine also serves as a nucleating agent. Such modification would be obvious because one would expect that the use of copper-phthalocyanine as taught by Warych and Babler would be similarly useful and applicable to the molding composition taught in Yoshino.

7. The Appellants argue the current invention yield unexpected results. The Appellants assert the combination of a glass fiber-reinforced polyolefin and a phthalocyanine provides the molding composition of the invention with improved mechanical properties and resistance to hot water. The Appellants further assert based on the unpredictable results of the present specification a composition containing 0.05 wt. % of phthalocyanine pigment has better hot water resistance than that containing 0.1 wt. % of phthalocyanine pigment. Appellants further assert that when viewing the unexpected results in the current specification against the Babler reference that teaches the use of 0.1 to 10 wt. % of phthalocyanine pigment the results are surprising and unexpected.

8. First, the Examiner argues the Appellants broadly claim a molding composition containing two components: glass fiber bonded olefin polymer and pigment with any mentioning of relevant mechanical or hot water resistance property. Second, whether the unexpected results are the results of unexpected improved results or a property not taught by the prior art, the "objective evidence of non-obviousness must be commensurate in scope with the claims which the evidence is offered to support."

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In other words the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. See In re Clemens, 622 F. 2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). The phthalocyanine pigment is used in the claimed range of 0.005 to 0.05 wt. %; however, the examples only reveal the 0.01, 0.05, 0.1 and 0.3 wt. % phthalocyanine pigment without any data points for the lower limit of 0.005 and no phthalocyanine pigment. In order to establish unexpected results over a claimed range, applicants should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. See In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960). Finally, Babler teaches an inventive phthalocyanine pigment used in an amount 0.01 to 30 wt. %. **The overall teaching of Yoshino in combination with Babler and Warych provides a prima facie case of obviousness and the Appellant has not provided enough data points or directed the invention to the unexpected properties for which the argument is based.**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Harlan whose telephone number is (571) 272-1102. The examiner can normally be reached on Mon-Thu, 10 AM - 8 PM.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 273-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert D. Harlan/
Primary Examiner
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rdh